

Practitioner's Docket No: U 016018-5

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00140

PATENT TRADEMARK OFFICE



CHAPTER II

**TRANSMITTAL LETTER
TO THE UNITED STATES ELECTED OFFICE (EO/US)
(ENTRY INTO U.S. NATIONAL PHASE UNDER CHAPTER II)**

INTERNATIONAL APPLICATION NO.	INTERNATIONAL FILING DATE	PRIORITY DATE CLAIMED
PCT/CN2004/000458	09 MAY 2004	10 MAY 2003

TITLE OF INVENTION

RECOMBINANT GENE MEDICINE OF ADENOVIRUS VECTOR AND GENE p53 FOR
TREATING PROLIFERATIVE DISEASES

APPLICANT(S)

1. PENG, Zhaohui,
2. ZHANG, Xiaozhi

Mail Stop PCT

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

ATTENTION: EO/US

**COMPLETION OF FILING REQUIREMENTS
FOR INTERNATIONAL APPLICATION ENTERING U.S. NATIONAL STAGE
IN U.S. ELECTED OFFICE (EO/US) UNDER 35 U.S.C. § 371**

(check and complete the applicable item, if applicable)

[x] This replies to the Notice of Defective Response under 35 U.S.C. § 371(FORM PCT/DO/EO/916).

[x] A copy of FORM PCT/DO/EO/916 accompanies this response.

CERTIFICATION UNDER 37 C.F.R. 1.8(a) and 1.10*

(When using Express Mail, the Express Mail label number is **mandatory**;
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

MAILING

☒ deposited with the United States Postal Service in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

37 C.F.R. 1.8(a)

☒ with sufficient postage as first class mail.

37 C.F.R. 1.10*

☐ as "Express Mail Post Office to Addressee"
Mailing Label No. _____
(mandatory)

TRANSMISSION

☐ transmitted by facsimile to the Patent and Trademark Office.

Signature

Janet I. Cord

Date: November 25, 2008

(type or print name of person certifying)

***WARNING:** Each paper or fee filed by "Express Mail" must have the number of the "Express Mail" mailing label placed thereon prior to mailing. 37 C.F.R. 1.10(b).
"Since the filing of correspondence under § 1.10 without the Express Mail mailing label thereon is an oversight that can be avoided by the exercise of reasonable care, requests for waiver of this requirement will not be granted on petition." Notice of Oct. 24, 1996, 60 Fed. Reg. 56,439, at 56,442.

(Completion of Filing Requirements for International Application Entering U.S. Elected Office (EO/US)

WARNING: *Where the items being submitted to complete the entry of the international application into the national phase are subsequent to 30 months from the priority date the application is still considered to be in the international state and if mailing procedures are utilized to obtain a date the express mail procedure of 37 C.F.R. § 1.10 must be used (because international application papers are not covered by an ordinary certificate of mailing, 37 C.F.R. § 108(2)(xi).*

NOTE: *Documents and fees must be clearly identified as a submission to enter the national stage under 35 U.S.C. § 371. Otherwise, the submission will be considered as being made under 35 U.S.C. § 111. 37 C.F.R. § 1.495(g).*

DECLARATION OR OATH

NOTE: *37 C.F.R. § 1.495(c): "If applicant complies with paragraph (b) of this section before expiration of thirty months from the priority date but omits . . . the oath or declaration of the inventor (35 U.S.C. 371(c)(4) and § 1.497), if a declaration of inventorship in compliance with § 1.497 has not been previously submitted in the international application under PCT Rule 4.17 (iv) within the time limits provided for in PCT Rule 26ter.1, applicant will be so notified and given a period of time within which to file the . . . oath or declaration in order to prevent abandonment of the application The payment of the surcharge set forth in § 1.492(e) is required for acceptance of the oath or declaration of the inventor later than the expiration of **thirty** months after the priority date."*

I. (a) [] No original declaration or oath was filed. Enclosed is the original declaration or oath for this application.

OR

(b) [] The declaration or oath that was filed was determined to be defective. A new original oath or declaration is attached.

NOTE: *For surcharge fee for filing declaration after filing date complete item IV(3)*

NOTE: *NOTE: Acceptable minimums in the declaration in an ordinarily filed U.S. application for identification of the specification to which it applies are:*

- (A) application number (consisting of the series code and the serial number, e.g., 08/123,456);*
- (B) serial number and filing date;*
- (C) attorney docket number which was on the specification as filed;*
- (D) title which was on the specification as filed and reference to an attached specification which is both attached to the oath or declaration at the time of execution and submitted with the oath or declaration; or*
- (E) title which was on the specification as filed and accompanied by a cover letter accurately identifying the application for which it was intended by either the application number (consisting of the series code and the serial number, e.g., 08/123,456), or serial number and filing date. Absent any statement(s) to the contrary, it will be presumed that the application filed in the PTO is the application which the inventor(s) executed by signing the oath or declaration.*

M.P.E.P. § 602, 8th ed.

NOTE: *Another minimum found acceptable in the declaration is the filing date (i.e., date of express mail) and the express mail number, useful where the serial number is not yet known. But note the practice where the express mail deposit is a Saturday, Sunday or holiday within the District of Columbia. 37 C.F.R. § 1.10(c).*

NOTE: *See 37 C.F.R. § 1.41(a).*

(complete as applicable)

Attached is a

- (a) ☐ Statement by practitioner that papers attached to declaration are a copy of those filed in PTO to get a filing date
- (b) ☐ Statement that substitute specification contains no new matter.
- (c) ☒ Amendment
- (d) ☐ Submission of "Sequence Listing," computer readable copy, and/or amendment pertaining thereto for biotechnology invention containing nucleotide and/or amino acid sequence
- (e) ☐ Communication
- (f) ☐

**TRANSMITTAL OF ENGLISH TRANSLATION
OF NON-ENGLISH LANGUAGE PAPERS**

- II.** ☒ Submitted herewith is an English translation of the non-English language international application papers as originally filed. It is requested that this translation be used as the copy for examination purposes in the PTO. (See 37 C.F.R. 1.495(c))

NOTE: For fee for processing a non-English application, complete item IV(4).

NOTE: A non-English oath or declaration in the form provided or approved by the PTO need not be translated. 37 C.F.R. § 1.69(b).

FEES

III.

NOTE: See 37 C.F.R. § 1.28(a).

1. Fees for search, exam or claims

- ☐ Non-U.S. Search Report filed —\$400.00;
small entity—\$200.00 \$ _____
- ☐ No Search Report —\$500.00; small entity —\$250.00 \$ _____
- ☐ Exam Fee not paid to U. S—\$200.00; small entity—\$100.00 \$ _____
- ☐ Search and Exam fee with U.S. WO or IPER conditions
not satisfied—\$100.00; small entity—\$50.00 \$ _____
- ☐ Search and Exam fee with U.S. WO or IPER conditions
satisfied—\$0.00 \$ _____

- ☐ Spec and drawing, each 50 pages over 100
37 C.F.R. 1.16(s)—\$250.00 \$ _____
- ☐ Each independent claim in excess of 3
(37 C.F.R. § 1.492—\$200.00; small entity—\$100.00 \$ _____
- ☐ each claim in excess of 20
(37 C.F.R. § 1.492—\$50.00; small entity—\$25.00 \$ _____
- ☐ multiple dependent claims(s)
(37 C.F.R. § 1.492—\$360.00; small entity—\$180.00 \$ _____

2. Surcharge fees

- ☐ surcharge set forth in 37 C.F.R. § 1.492(e) for accepting
the declaration later than 30 months after the priority date
in filing an application in the U.S. as a designated
office—\$130.00; small entity—\$65.00 \$ _____

NOTE: The processing fee in the next item 3 below is not subject to a reduction for small entity status.

- 3. ☐ processing fee set forth in 37 C.F.R. § 1.492(f)
for acceptance of an English translation later
than 30 months after the priority date—\$130.00 \$ _____
- Total Fees \$ _____

SMALL ENTITY STATUS

- IV. a. ☒ A Statement or Written Assertion that this filing is by a small entity

NOTE: See 37 C.F.R. § 1.28(a).

(check and complete applicable items)

- ☐ is attached.
 - ☒ was filed on August 29, 2007
 - ☐ was made by paying the basic national fee as a small entity.
- b. ☐ A separate refund request accompanies this paper.

EXTENSION OF TIME

(complete (a) or (b), as applicable)

V.

The proceedings herein are for a patent application. Accordingly, the provisions of 37 C.F.R. § 1.136(a) apply.

- (a) ☐ Applicant petitions for an extension of time, the fees for which are set out in 37 C.F.R. § 1.17(a)(1)-(4), for the total number of months checked out below:

	Extension (months)	Fee for other than small entity	Fee for small entity
<input type="checkbox"/>	one month	\$ 130.00	\$ 65.00
<input type="checkbox"/>	two months	\$ 490.00	\$ 245.00
<input type="checkbox"/>	three months	\$ 1,110.00	\$ 555.00
<input type="checkbox"/>	four months	\$ 1,730.00	\$ 865.00

NOTE: The 2-month time period for reply to A Notice to File Missing Parts of an Application is not identified on the Notice as a statutory period subject to 35 U.S.C. 133. Thus, extensions of time of up to 5 months under 37 CFR 1.136(a), followed by additional time under 37 CFR 1.136(b), when appropriate, are permitted. MPEP 710.02(d)(c), 8th ed.

☐ five months \$ 2,350.00 \$ 1,175.00

Fee: \$ _____

If an additional extension of time is required, please consider this a petition therefor.

(check and complete the next item, if applicable)

- ☐ An extension for _____ months has already been secured. The fee paid therefor of \$ _____ is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request \$ _____

or

- (b) ☒ Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

TOTAL FEE DUE

VI.

The total fee due is:

Completion fee(s) \$ _____
Extension fee (if any) \$ _____
TOTAL FEE DUE \$ _____

PAYMENT OF FEES

VII.

- ☐ Enclosed is a check in the amount of \$ _____
☐ Charge Account No. 12-0425 in the amount of \$ _____
☐ A duplicate of this request is attached.

NOTE: Fees should be itemized in such a manner that it is clear for which purpose the fees are paid. 37 C.F.R. § 1.22(b).

AUTHORIZATION TO CHARGE ADDITIONAL FEES

VIII.

WARNING: *Accurately count claims, especially multiple dependent claims, to avoid unexpected high charges if extra claims are authorized.*

NOTE: *"A written request may be submitted in an application that is an authorization to treat any concurrent or future reply, requiring a petition for an extension of time under this paragraph for its timely submission, as incorporating a petition for extension of time for the appropriate length of time. An authorization to charge all required fees, fees under § 1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission. Submission of the fee set forth in § 1.17(a) will also be treated as a constructive petition for an extension of time in any concurrent reply requiring a petition for an extension of time under this paragraph for its timely submission." 37 C.F.R. § 1.136(a)(3).*

NOTE: *"Amounts of twenty-five dollars or less will not be returned unless specifically requested within a reasonable time, nor will the payer be notified of such amounts; amounts over twenty-five dollars may be returned by check or, if requested, by credit to a deposit account." 37 C.F.R. § 1.26(a).*

- ☒ The Commissioner is hereby authorized to charge the following additional fees that may be required by this paper and during the entire pendency of this application to Account No. 12-0425

- ☒ 37 C.F.R. § 1.492(a), (b) or (c) (search or exam fee)
☐ 37 C.F.R. § 1.492(b), (c), and (d) (presentation of extra claims)

NOTE: *Because additional fees for excess or multiple dependent claims not paid on filing or on later presentation must only be paid or these claims cancelled by amendment prior to the expiration of the time period set for response by the PTO in any notice of fee deficiency (37 C.F.R. § 1.16(d)), it might be best not to authorize the PTO to charge additional claim fees, except possibly when dealing with amendments after final action.*

- ☒ 37 C.F.R. 1.16(s) (spec and drawing, each 50 pages over 100)
☒ 37 C.F.R. § 1.17 (application processing fees)
☒ 37 C.F.R. § 1.17(a)(1)-(5) (extension fees pursuant to § 1.136(a)).

NOTE: Section 1.311(b) provides that an authorization to charge the issue fee (§ 1.18) to a deposit account may be filed in an individual application **only after the mailing of the notice of allowance**. Accordingly, general authorizations to any fees and specific authorizations to pay the issue fee that are filed prior to the mailing of a notice of allowance will generally not be treated as requesting payment of the issue fee and will not be given effect to act as a reply to the notice of allowance. Applicant, when paying the issue fee, should submit a new authorization to charge fees, such as by completing box 6b on the current PTOL 85-B form. Where no reply to the notice of allowance is received, the application will stand abandoned notwithstanding the presence of general authorizations to pay fees or a specific authorization to pay the issue fee that were submitted prior to mailing of the notice of allowance. Where an attempt is made to pay the issue fee but an incorrect amount is submitted, § 1.311(b)(1), or where the Office's issue fee transmittal form (currently PTOL-85(B)) is completed by applicant and submitted, § 1.311 (b)(2), in reply to a notice of allowance, an exception will be made. Such submissions will operate as a request to charge the issue fee to any deposit account identified in a previously filed (i.e., submitted prior to the mailing of the notice of allowance) authorization to charge fees, and will be allowed to act as payment of the correct issue fee. § 1.311(b). See also the change to § 1.26(b), Notice of September 8, 2000, Fed. Reg. 54603-54683, at 54646 and 54647.

☒ [X] 37 C.F.R. § 1.492(e) and/or (f) surcharge fees for filing the declaration and/or an English translation of an international application later than 30 months from the earliest-claimed priority date.

WARNING: It would be wise to always check this last authorization.

Refund any overpayment to deposit account 12-0425.


SIGNATURE OF PRACTITIONER

Reg. No.: 33,778

Janet I. Cord
(type or print name of practitioner)

Tel. No.: (212)708-1935

P.O. Address

c/o Ladas & Parry LLP
26 West 61st Street
New York, N.Y. 10023

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00140

PATENT TRADEMARK OFFICE



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

U.S. APPLICATION NUMBER NO.	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
10/556,640	Zhaohui Peng	U 016018-5

140
LADAS & PARRY LLP
26 WEST 61ST STREET
NEW YORK, NY 10023

RECEIVED

NOV - 3 2008

L & P LLP

INTERNATIONAL APPLICATION NO.	
PCT/CN04/00458	
I.A. FILING DATE	PRIORITY DATE
05/09/2004	05/10/2003

**CONFIRMATION NO. 4272
371 FORMALITIES LETTER**



Date Mailed: 10/27/2008

NOTIFICATION OF DEFECTIVE RESPONSE

The following items have been submitted by the applicant or the IB to the United States Patent and Trademark Office as an Elected Office (37 CFR 1.495):

- Priority Document
- Copy of the International Application filed on 11/10/2005
- English Translation of the IA filed on 02/22/2008
- Copy of the International Search Report filed on 11/10/2005
- Copy of IPE Report filed on 11/10/2005
- Copy of Annexes to the IPER filed on 11/10/2005
- Preliminary Amendments filed on 11/21/2006
- Information Disclosure Statements filed on 11/21/2006
- Biochemical Sequence Diskette filed on 11/21/2006
- Oath or Declaration filed on 11/21/2006
- Biochemical Sequence Listing filed on 11/10/2005
- Small Entity Statement filed on 02/27/2006
- Request for Immediate Examination filed on 11/10/2005
- U.S. Basic National Fees filed on 11/10/2005
- Priority Documents filed on 11/10/2005

Applicant's response filed 02/22/2008 is hereby acknowledged. The following requirements set forth in the NOTIFICATION of MISSING REQUIREMENTS mailed 06/21/2006 have not been completed.

The following items **MUST** be furnished within the period set forth below in order to complete the requirements for acceptance under 35 U.S.C. 371:

- Translation of the application into English. The current translation of the application into English is defective as described below. Note a processing fee will be required if submitted later than 30 months from the priority date.
- Drawings 4-11 have foreign text which has not been translated at the bottom of the drawings. The translation of the drawings cannot be added to the text in the specification. The translation must be a true translation of the published International Application. Any changes to the translation must be made in the preliminary amendment.

Applicant is required to complete the response within a time limit of ONE MONTH from the date of this Notification or within the time remaining in the response set forth in the Notification of Missing Requirements, whichever is the longer. No extension of this time limit may be granted under 37 CFR

1.136, but the period for response set in the Notification of Missing Requirements may be extended under 37 CFR 1.136(a).

Additionally the following defects have been observed:

- Annexes have not been entered because the IPER annexes have not been translated.

Applicant is reminded that any communications to the United States Patent and Trademark Office must be mailed to the address given in the heading and include the U.S. application no. shown above (37 CFR 1.5)

Registered users of EFS-Web may alternatively submit their reply to this notice via EFS-Web.

<https://sportal.uspto.gov/authenticate/AuthenticateUserLocalEPF.html>

For more information about EFS-Web please call the USPTO Electronic Business Center at 1-866-217-9197 or visit our website at <http://www.uspto.gov/ebs>.

If you are not using EFS-Web to submit your reply, you must include a copy of this notice.

KAREN M WILLIAMS

Telephone: (703) 308-9140 EXT 213

**English Translation of the Published
International Application**